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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Mark S. Franke et al. Art Unit 3761
Serial No. 10/735,978
Filed December 15, 2003
Confirmation No. 4244
For ABSORBENT GARMENT
Examiner Melanie Jo Hand

APPEAL BRIEF

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APPEAL BRIEF

This is an appeal from the non-final rejection of the claims of the above-referenced application made in the Office action dated January 25, 2007. A Notice of Appeal was filed on April 23, 2007.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is also hereby authorized to charge any additional fees which may be required to Deposit Account No. 19-1345.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

An appeal has been filed in U.S. Patent Application Serial No. 10/736,443 entitled ABSORBENT GARMENT. The '443 application has common subject matter with the case at hand and Kimberly-

Clark Worldwide, Inc. is owner of a 100 percent interest in the '443 application.

III. STATUS OF CLAIMS

Claims 1-25 are currently pending in the application for consideration. A copy of the claims involved in this appeal appears in the Claims Appendix of this Brief.

Claims 1-25 stand rejected.

The rejection of claims 1-25, and in particular the rejection of claim 1, is being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the rejection from which this appeal is taken (i.e., the Office action dated January 25, 2007).

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, claim 1 is directed to an absorbent garment 10 for personal wear about the wearer's waist. See paragraph [0037], page 9, and Figs. 1 and 2. The absorbent garment 10 comprises a garment shell 22 configured for encircling the wearer's waist. See paragraph [0038], pages 9 and 10, and Figs. 1 and 2. The garment shell 22 has a front waist region 32, a front waist end 56 at said front waist region 32, a back waist region 34 and a back waist end 58 at said back waist region 34; and an absorbent

assembly 24 disposed within the garment shell 22 and constructed to take in and retain body exudates released by the wearer. See paragraph [0040], pages 10 and 11, and Figs. 1 and 2. The absorbent assembly 24 has an inner surface 128 adapted for contiguous relationship with the wearer's body, an outer surface 130, a front waist region 122 in opposed relationship with the front waist region 32 of the garment shell 22, a back waist region 124 in opposed relationship with the back waist region 34 of the garment shell 22, a crotch region 126 extending longitudinally between and interconnecting the front waist region 122 of the absorbent assembly 24 and the back waist region 124 of the absorbent assembly 24, a front waist end 138 and a back waist end 140. See paragraph [0058], pages 19 and 20, and Figs. 2 through 6. The absorbent assembly 24 is releasably and refastenably attached generally at its front waist end 138 to the garment shell 22 generally at the front waist end 56 of the garment shell 22. See paragraph [0078], page 29, and Figs. 2 through 4a. The absorbent assembly 24 is also releasably and refastenably attached generally at its back waist end 140 to the garment shell 22 generally at the back waist end 58 of the garment shell 22 such that the absorbent assembly 24 is selectively detachable from and reattachable to the garment shell 22. See paragraph [0078], page 29, and Figs. 2 through 4a.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejections of claims 1-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,115,847 (Rosch et al.) in view of U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.).

VII. ARGUMENT

Claims 1-25 are nonobvious and patentable over U.S. Patent No. 6,115,847 (Rosch et al.) in view of U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.).

The absorbent garment as recited in claim 1 of the present application is a two-piece garment, i.e., an absorbent assembly and a garment shell, that are configured so that the garment shell overlays, or surrounds, the absorbent assembly at least at the waist of the wearer. The absorbent assembly is attached to the garment shell via a releasable and refastenable attachment to permit selective detachment and reattachment of absorbent assembly from/to the garment shell. Such a construction allows the absorbent garment to be adequately secured to the garment shell during wear to inhibit unintended separation of the garment shell from the absorbent assembly such by the wearer pulling off and removing the shell from the wearer's waist or the shell simply falling off of an active wearer, while still allowing the absorbent garment to be removed and discarded after soiling without having to replace the garment shell.

Claim 1 is submitted to be nonobvious in view of and patentable over the references of record, and in particular U.S. Patent No. 6,115,847 (Rosch et al.) in view of U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.), in that whether considered alone or in combination the references fail to show or suggest an absorbent garment including an absorbent assembly that is selectively detachable from and reattachable to the garment shell.

Rosch et al., with reference to Figs. 1 and 2 thereof,

disclose an active wear garment 10 comprised of a pant structure 12 and a skirt cover 14. The skirt cover 14 has a front panel 15 (Fig. 1) secured to a back panel 21 (Fig. 2). The front panel 15 has a waist region 31, and the back panel 21 has a waist region 33. The pant structure 12 includes a front waist band region 20, and a back waist band region 22 (Fig. 2). The pant structure 12 and the skirt cover 14 are permanently joined at the waist of the garment 10. See column 1, lines 53-56 in which Rosch et al. teach that the waist band regions 20, 22 of the pant structure 12 are non-refastenably joined to the waist regions 31, 33 of the skirt cover 14. See also column 14, lines 38-43, column 15, lines 2-7, claim 1, claim 6, and the abstract.

In Fig. 4, Rosch et al. disclose a garment 110 of a second embodiment having a trunk (e.g., shorts-type) cover 114 instead of the skirt cover 14 shown in Figs. 1 and 2. The trunk cover 114 can be formed with an integrated pant structure 112 or used by itself (i.e., without a pant structure). When the pant structure 112 is combined with the trunk cover 114, the pant structure and the trunk cover are joined at the waist. See column 12, lines 42-46. More specifically, waist regions 131, 133 of the trunk cover 114 are non-refastenably engaged to front and back waist band regions 120, 122 of the pant structure. See column 16, lines 14-20 and lines 50-57.

Rosch et al. thus explicitly teach that the trunk or skirt cover is permanently attached to, i.e., non-refastenably engaged with the pant structure at their respective waist regions. Accordingly, Rosch et al. fail to disclose an absorbent assembly that is selectively detachable from and reattachable to a garment shell as recited in claim 1. Indeed, such an arrangement would be contrary to the teachings of Rosch et al.

In the Office action of January 25, 2007 (at page 2

thereof), the Examiner agrees that Rosch et al. fail to teach that the pant structure and the trunk/skirt cover are attached in the recited manner. However, the Examiner takes the further position that Rosch et al. teach simply that they are joined and do not explicitly exclude any method of such joining. "While the drawings appear to depict only a permanent joining a releasable/refastenable arrangement is not precluded." Contrary to the Examiner's position, Rosch et al. are quite clear in the passages from column 14, line 25 through column 16, line 57 that in every embodiment of Rosch et al.'s invention in which the garment includes a skirt/trunk cover and a pant structure that the skirt/trunk cover and pant structure are "non-refastenable" engaged. This is the lone teaching of Rosch et al. and is rather explicit that the engagement must be a non-refastenable one. Certainly there is no suggestion or reason provided by Rosch et al. for the releasable and refastenable arrangement recited in claim 1 of the present application.

Nor do Christoffel et al. provide such a suggestion or reason. Christoffel et al. disclose a "one-piece" "disposable" swimsuit for girls. That is, the entire swimsuit is intended to be used once and then discarded. Thus, as in Rosch et al., the various components of the article (in this instance the swimsuit) are not constructed or even intended to be separated from each other. In particular, in each embodiment illustrated and described in Christoffel et al. the swimsuit 20 comprises a chassis 22 permanently (i.e., non-refastenable) secured to a bodice 42 to form the one-piece swimsuit. See paragraph [0074] in which Christoffel et al. disclose bonding the bodice 42 to the chassis 22 by adhesive bonding, thermal bonding or ultrasonic bonding, all of which are non-refastenable bonds. In other embodiments the bodice 42 and chassis 22 are instead

constructed from a single piece of coverstock 50 (Fig. 19). See Paragraph [0071].

With particular reference to Figs. 1-19 of Christoffel et al., in some of the disclosed embodiments the swimsuit 20 may further incorporate a relatively small rectangular integral (i.e., non-refastenably secured) absorbent assembly 54. See, e.g., Fig. 2 and paragraphs [0089-0091] in which the absorbent assembly is disposed between the coverstock 50 and a body side liner 108 and is thus non-releasably and non-refastenably disposed in the swimsuit. In other embodiments of Figs. 1-19, Christoffel et al. teach that the swimsuit 20 may be worn over a separate absorbent garment 88 (such as an absorbent swim pant). See, e.g., Fig. 16 and paragraph [0069]. Thus, in such an embodiment there is no releasable connection therebetween.

In Figs. 20 and 21 of Christoffel et al. (and paragraphs [0072-0074] as relied on in the Office action), Christoffel et al. teach that the chassis 22 to which the bodice 42 is bonded may itself be a pant-like absorbent product 98 such as a diaper or training pant. The bodice 42 in Figs. 20 and 21 is bonded to the front of the pant-like absorbent product 98 and covers the front upper torso without necessarily covering the wearer's back upper torso. Thus, as in the embodiments of Figs. 1-19, the bodice 42 is still bonded (i.e., non-refastenably secured) to the chassis 22.

Christoffel et al. (like Rosch et al.) therefore fail to teach or suggest an absorbent assembly releasably and refastenably attached to the garment shell such that the absorbent assembly is selectively detachable from and reattachable to the garment shell as recited in claim 1.

Since both Rosch et al. and Christoffel et al. fail individually to teach or suggest an absorbent assembly

selectively detachable from and reattachable to a garment shell, a combination of these references must also fail to teach or suggest this feature of claim 1.

Moreover, there is no reasoning provided by Christoffel et al. or Rosch et al. that would motivate one skilled in the art to modify Rosch et al. so that the skirt or trunk cover 14, 114 is selectively detachable from and reattachable to the pant structure 12, 112, nor is there any other evidence of record upon which the Examiner can base such a conclusion.

The lone mention by Christoffel et al. of a refastenable fastening system is found at paragraph [0073] thereof in which Christoffel et al. teach that a refastenable fastening system 92 (Fig. 21) may be used for greater ease in applying and removing the swimsuit. As an example, in the embodiment of Fig. 21, Christoffel et al. teach that a front strap portion 68 of the bodice 42 is releasably attached to a back strap portion 70 of the bodice (e.g., at the shoulders of the wearer). But even when the front and back strap portions are separated, the swimsuit 20 is still a one piece swimsuit, such that the entire swimsuit is discarded instead of a portion of the swimsuit being separable from another portion thereof.

The same is true for the embodiment of Fig. 19 in which the fastening system 92 is used to fasten the bodice 42 to the chassis 22 at the front waist of the chassis. Upon release of the fasteners, the swimsuit is still one whole piece such that the bodice is not detachable from the chassis (particularly at the back waist end as recited in claim 1). There is no suggestion whatsoever of using a similar fastening system to secure the bodice 42 to the absorbent pant product 98 of Christoffel et al. Nor is there any suggestion for using such a fastening system to releasably and refastenably secure the

bodice 42 to the chassis 22. Rather, Christoffel et al. expressly teach bonding the bodice to the absorbent assembly of Figs. 20 and 21. See paragraph [0074].

In the January 25, 2007 Office action (page 2), the Examiner incorrectly states that "[t]he record is clear regarding Christoffel's teaching of a releasable and refastenable hook and loop fastening system that attaches two clothing entities at the front and back waist areas." Rather, Christoffel et al. teach a single-piece garment in which one portion of the garment is refastenably attached to another portion of the garment. Nowhere do Christoffel et al. describe or even suggest two separate clothing entities (especially in the overlaid configuration recited in claim 1 of the present application) that are releasably and refastenably attached together. There is also no teaching anywhere in Christoffel that such entities are refastenably attached at both the front and back waist regions of the article.

Thus, one skilled in the art would not be motivated by Christoffel et al. to use a refastenable fastening system to selectively attach the skirt/trunk of Rosch et al. to the pants structure thereof, particularly at the front and back waist ends of the absorbent assembly. Nor is there any reasoning provided by Christoffel et al. or Rosch et al. from which one skilled in the art would seek to provide such an arrangement. The fact that Christoffel et al. teach the use of hook and loop type fasteners for use in applying and removing the swimsuit from the wearer does not suggest to one skilled in the art to make an absorbent assembly separable from a surrounding garment shell as recited in claim 1.

For all of the above reasons, claim 1 is submitted to be nonobvious in view of and patentable over the references of record.

Claims 2-25 depend directly or indirectly from claim 1 and are submitted to be patentable over the references of record for the same reasons as claim 1.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 1-25 be allowed.

Respectfully submitted,

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CLAIMS APPENDIX

1. An absorbent garment for personal wear about the wearer's waist, said absorbent garment comprising:

 a garment shell configured for encircling the wearer's waist and having a front waist region, a front waist end at said front waist region, a back waist region and a back waist end at said back waist region; and

 an absorbent assembly disposed within the garment shell and constructed to take in and retain body exudates released by the wearer, the absorbent assembly having an inner surface adapted for contiguous relationship with the wearer's body, an outer surface, a front waist region in opposed relationship with the front waist region of the garment shell, a back waist region in opposed relationship with the back waist region of the garment shell, a crotch region extending longitudinally between and interconnecting the front waist region of the absorbent assembly and the back waist region of the absorbent assembly, a front waist end and a back waist end, the absorbent assembly being releasably and refastenably attached generally at its front waist end to the garment shell generally at the front waist end of the garment shell, said absorbent assembly also being releasably and refastenably attached generally at its back waist

end to the garment shell generally at the back waist end of the garment shell such that the absorbent assembly is selectively detachable from and reattachable to the garment shell.

2. An absorbent garment as set forth in claim 1 wherein the absorbent garment has at least one outer leg opening and a pair of inner leg openings separate from and disposed within the garment shell, the absorbent assembly at least in part defining said inner leg openings of the absorbent garment, said garment shell defining said at least one outer leg opening of the absorbent garment.

3. An absorbent garment as set forth in claim 2 wherein the absorbent assembly is configured to provide an elastic fit of the absorbent assembly against the wearer's legs at the inner leg openings of the absorbent garment, the garment shell being configured to generally hang loose about the wearer's legs at the at least one outer leg opening of the absorbent garment.

4. An absorbent garment as set forth in claim 2 wherein the absorbent assembly is configured to encircle the legs of the wearer and fully defines the inner leg openings of the absorbent garment.

5. An absorbent garment as set forth in claim 2 wherein the garment shell further has a crotch region extending longitudinally between the front and back waist regions of the

garment shell, the crotch region of the garment shell at least in part defining a pair of outer leg openings of the absorbent garment which are separate from the inner leg openings of the absorbent garment.

6. An absorbent garment as set forth in claim 5 wherein the crotch region of the absorbent assembly is free from attachment to the crotch region of the garment shell.

7. An absorbent garment as set forth in claim 1 further comprising at least one waist elastic member operatively joined to at least one of the front waist end of the absorbent assembly, the back waist end of the absorbent assembly, the front waist end of the garment shell and the back waist end of the garment shell to provide an elastic fit of the absorbent garment against the wearer's waist.

8. An absorbent garment as set forth in claim 1 wherein the absorbent garment has a waist opening, the front and back waist ends of the absorbent assembly at least in part defining the waist opening of the absorbent garment.

9. An absorbent garment as set forth in claim 1 wherein the absorbent assembly is configured to encircle the waist of the wearer generally at the front and back waist ends of the absorbent assembly to fully define the waist opening of the absorbent garment.

10. An absorbent garment as set forth in claim 9 wherein the absorbent assembly is a brief-style absorbent assembly.

11. An absorbent garment as set forth in claim 1 wherein the garment shell has a configuration selected from the group comprising shorts, skorts, skirts and swim trunks.

12. An absorbent garment as set forth in claim 1 wherein the absorbent garment has a waist opening, at least one outer leg opening, and laterally opposite side seams extending generally from the waist opening to said at least one outer leg opening, the absorbent garment being releasable and refastenable along at least a portion of each of said side seams.

13. An absorbent garment as set forth in claim 12 wherein the absorbent garment is permanently closed along another portion of each of said side seams.

14. An absorbent garment as set forth in claim 12 wherein the absorbent garment has a length from the waist opening to the at least one leg opening, the releasable and refastenable portion of each side seam comprising in the range of about 25 percent to about 50 percent of said length.

15. An absorbent garment as set forth in claim 12 wherein the garment shell comprises a front panel assembly having laterally opposite side margins and a back panel assembly having corresponding laterally opposite side margins, the front panel

assembly being in generally overlapping relationship with the back panel assembly at the side margins of said front and back panel assemblies whereby the overlapped side margins generally define the side seams of the absorbent garment, the side margins being releasably and refastenably attached to each other along at least a portion of a length of said side margins to define the releasable and refastenable portion of the side seams of the absorbent garment.

16. An absorbent garment as set forth in claim 12 wherein the side seams of the absorbent garment are releasable and refastenable along the full length of the side seams from the waist opening of the absorbent garment to the at least one outer leg opening thereof.

17. An absorbent garment as set forth in claim 4 wherein the absorbent assembly has laterally opposite outer edges at the front waist region of the absorbent assembly and corresponding laterally opposite outer edges at the back waist region of the absorbent assembly, the front and back waist regions of the absorbent assembly being attached to each other generally at the respective outer edges of the front and back waist regions whereby the front and back waist regions of the absorbent assembly together with the crotch region of the absorbent assembly encircle the wearer's legs and define the inner leg

openings of the absorbent garment.

18. An absorbent garment as set forth in claim 17 wherein the front and back waist regions of the absorbent assembly are releasably and refastenably attached at the respective outer edges of said front and back waist regions.

19. An absorbent garment as set forth in claim 4 wherein the absorbent assembly further comprises a pair of laterally opposite front side panels extending outward of the absorbent assembly generally at the front waist region on laterally opposite sides thereof, and a pair of laterally opposite back side panels extending outward of the absorbent assembly generally at the back waist region on laterally opposite sides thereof, each of the front side panels being attached to a corresponding one of the back side panels such that the front and back side panels together with the crotch region of the absorbent assembly together fully define the inner leg openings of the absorbent garment.

20. An absorbent assembly as set forth in claim 19 wherein each of the front side panels of the absorbent assembly is releasably and refastenably attached to a corresponding one of the back side panels of the absorbent assembly.

21. An absorbent garment as set forth in claim 20 wherein the garment shell comprises a front panel assembly having

laterally opposite side margins and a back panel assembly having corresponding laterally opposite side margins, the front panel assembly being releasably and refastenably attached to the back panel assembly generally at the respective side margins thereof.

22. An absorbent garment as set forth in claim 1 wherein the absorbent garment has laterally opposite front side margins and corresponding laterally opposite back side margins, the front side margins and the back side margins being in overlapping relationship with each other to define laterally opposite side seams of the absorbent garment, the amount of overlap of the front side margins with the back side margins being in the range of about 0.1 inches (2.5 mm) to about 6 inches (152.4 mm).

23. An absorbent garment as set forth in claim 22 wherein the amount of overlap of the front side margins with the back side margins is in the range of about 0.5 inches (12.7 mm) to about 3 inches (76.2 mm).

24. An absorbent garment as set forth in claim 1 wherein the absorbent assembly comprises a liquid permeable liner defining the inner surface of the absorbent assembly adapted for contiguous relationship with the wearer, an outer cover in generally opposed relationship with the liner and defining the outer surface of the absorbent assembly, and an absorbent body

disposed between the liner and the outer cover.

25. An absorbent garment as set forth in claim 24 wherein the outer cover of the absorbent assembly is liquid impermeable and the garment shell is liquid permeable.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.